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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MORENA GUADALUPE MELGAR,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-71866

Agency No. A072-232-417

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted October 9, 2012**

Before: RAWLINSON, MURGUIA, and WATFORD, Circuit Judges.

Morena Guadalupe Melgar, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying her motion to reconsider the BIA’s prior decision dismissing her appeal and denying her motion to remand. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

of discretion the denial of a motion to reconsider. *Valeriano v. Gonzales*, 474 F.3d 669, 672 (9th Cir. 2007). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Melgar’s motion to reconsider where she did not identify any error of law or fact in the BIA’s previous determinations that she did not qualify for cancellation of removal under 8 U.S.C. § 1229b(a), and that her motion to remand failed to show that the evidence she had submitted was not available at the time of her hearing before the immigration judge. *See* 8 C.F.R. § 1003.2(b)(1), (c)(1); *Romero-Ruiz v. Mukasey*, 538 F.3d 1057, 1063 (9th Cir. 2008) (“The formal requirements of a motion to remand and a motion to reopen are the same.”).

We lack jurisdiction to review Melgar’s contentions that 8 U.S.C. § 1254a(e) does not apply to individuals seeking cancellation of removal under 8 U.S.C. § 1229b(a) and that the agency miscalculated her seven years of continuous residence under 8 U.S.C. § 1229b(a)(2) because she did not raise these claims before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (explaining that this court lacks jurisdiction to review contentions not raised before the agency).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.